



**The Comptroller General
of the United States**

Washington, D.C. 20548

Jordan

Decision

Matter of: Training and Management Resources, Inc.

File: B-234710

Date: June 29, 1989

DIGEST

Agency satisfied obligation to conduct meaningful discussions, even though it did not advise the incumbent offeror that its costs were higher than the government's cost estimate, where the agency reasonably advised the offeror during discussions of all matters, including costs, found in the evaluation to need addressing.

DECISION

Training and Management Resources, Inc. (TMR), protests the award to MINACT, Inc., of a cost-reimbursement contract for the operation of the Bamberg, South Carolina, Job Corps Center. Request for proposals (RFP) No. 88-RIV-JC-0010 was issued by the Department of Labor. TMR contends that it was denied meaningful discussions.

We deny the protest.

The RFP provided for award to the most advantageous offeror with "technical factors . . . considered significantly more important than total cost plus fee." Proposals were evaluated under 11 technical factors of which the following are relevant to the protest: (1) "Educational Training"; (2) "Vocational Training"; (3) "Corpsmember Support"; (4) "Residential Living/Support"; (5) "Past Program and Financial Performance"; and (6) "Cost Justification."

MINACT, TMR, and two other offerors submitted proposals and, after the initial evaluation, all were included in the competitive range with MINACT scored highest at 80.44 points and TMR, the incumbent, scored third highest at 72.88 points. Each offeror was provided a written list of

045876/139005

matters for discussion identified by the evaluators in each area of the evaluation. These matters were reviewed with the offerors and clarifications were provided for questions raised. Offerors were then given the opportunity to submit best and final offers.

TMR responded to all matters raised and lowered its costs. After a second review, MINACT was scored first with 85.56 points at an evaluated cost of \$6,076,074 which included \$148,065 to phase out TMR. TMR was scored third with 80.68 points at an evaluated cost of \$6,459,414, the highest of all offerors.

The contracting officer reviewed the evaluation results and found the MINACT proposal was most advantageous to the government. With respect to TMR, he noted that its proposed costs were well above the government cost model and that the major reason that TMR's costs were higher than the model and other offerors was related to high salary increases. In contrast, MINACT's costs were comparable to the government estimate.

In its original protest, TMR contended that cost was the primary basis for award, notwithstanding the RFP's plain provision that "technical factors are considered significantly more important." However, after reviewing the agency's report, TMR admits in its comments that the record "clearly establishes that the award was based on technical scores as well as cost." Accordingly, we need not consider this ground of protest further.

Nevertheless, TMR continues to argue that it was denied meaningful discussions and thus it was denied a reasonable opportunity to submit cost and technical revisions to its proposal. In particular, TMR believes that it should have been told of the agency's belief that its costs were unreasonably high, and provided a more explicit explanation of questions in the six evaluation areas listed above.

The requirement for discussions with all responsible offerors whose proposals are in the competitive range can only be satisfied by advising them of deficiencies in their proposals and affording them the opportunity to satisfy the government's requirements through the submission of revised proposals. Federal Acquisition Regulation § 15.610(c)(2)-(5) (FAC 84-16); Furuno U.S.A., Inc., B-221814, Apr. 24, 1986, 86-1 CPD ¶ 400. Agencies are not, however, obligated to afford offerors all-encompassing discussions, Training and Mgmt. Resources, Inc., B-220965, Mar. 12, 1986, 86-1 CPD ¶ 244, or to discuss every element of a technically acceptable, competitive range, proposal

that has received less than the maximum possible score, Associated Chem. and Env'tl. Servs., et al., 67 Comp. Gen. 314 (1988), 88-1 CPD ¶ 248, but generally must lead offerors into the areas of their proposals which require amplification. Furuno U.S.A., Inc., B-221814, supra. Ultimately, the content and extent of discussions are matters within the judgment of the agency involved and are not subject to question by our Office unless they are without a reasonable basis. Chemonics Int'l, B-222793, Aug. 6, 1986, 86-2 CPD ¶ 161. Based upon our review of the record, we find that TMR was provided meaningful discussions in all areas.

With regard to "Cost Justification" (8 points maximum), one evaluator rated TMR as "very good" (6.4 points) and noted that although its salary costs were between 17 and 27 percent higher than the cost model, and might be structured too high, these salaries were "fully sufficient to attract and retain qualified staff." The other evaluator rated TMR as "poor" (1.6 points) and raised various matters for discussion. Among others, the following matters were identified to TMR during discussions:

"Since offeror is incumbent contractor:

- (a) How does proposed staffing compare to current? What are increases? decreases?
- (b) How do proposed salaries compare to current? What is the percent salary increase?
- (c) How does each major category - food, clothing and other non-salary lines - compare to a recent 12 month actual? Large increases and all decreases should be explained."

In response to these matters, TMR reported an increase in 15 employees and a 24.9-percent net salary increase for which it noted that there had been "no salary adjustment to bring Bamberg in line with results of a salary survey of [the] local area" since 1983. Both evaluators were satisfied with TMR's responses, and the second evaluator raised TMR's score to "very good" providing TMR with a score of 6.4 out of 8 points.

We believe that the matters raised were sufficient to lead TMR into the area of costs during discussions. There was no legal requirement that an offeror be told its proposed costs exceeded the government's cost model, where, as here, the agency does not view an offeror's costs as unreasonably high. See Education Dev. Ctr., Inc., B-224205, Jan. 30, 1987, 87-1 CPD ¶ 99. Neither the source selection authority's comment on the cost difference, nor the evaluator's assessment that salaries might be "too high," indicate that

they deemed these costs unreasonable. To the contrary, the evaluators believed the costs were justified, but the selection authority believed the cost was too high to justify an award to TMR, especially given its lower technical rating. As the incumbent, TMR was aware that its cost proposal represented a significant increase over prior contract costs. Indeed, its response to the matters raised by the evaluators regarding cost justification and lowering of its overall costs reflects that awareness. Under the circumstances, we find the discussions in this regard were meaningful.

We also believe TMR received meaningful discussions with regard to the other five areas it has identified. With the exception of "Past . . . Performance," the evaluators identified various matters for discussion in each of the evaluation areas, were generally satisfied with TMR's responses, and upgraded its scores where appropriate.

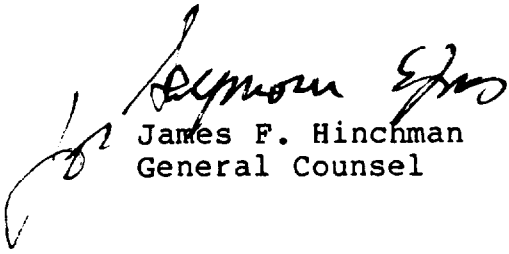
TMR's only unsatisfactory response concerned "Corpsmember Support," where the evaluators requested an explanation of why mail would not be distributed on Saturdays. TMR's response was to the effect that since the majority of the offices in the camp were closed on Saturdays the mail would be safer if left in the post office. Feeling that TMR's explanation showed a lack of concern for Corpsmember morale, the evaluators decided not to raise TMR's score. Based on our review, we believe that the questions asked properly led TMR into an area requiring improvement. To the extent TMR failed to provide a satisfactory response, this is no indication that discussions in this area were not meaningful.

Similarly, the evaluators' failure to award TMR a perfect score or to raise matters for discussion in the area of "Past . . . Performance," does not indicate that TMR was denied meaningful discussions. This evaluation area was worth a maximum of 15 points and TMR's 38 page submission received 10 points from the evaluators. The record shows that any deficiencies in this area were viewed as weaknesses in actual performance, a matter which could not be remedied through discussions. See Chemonics Int'l, B-222793, supra.

In any event, while it is true that TMR did not receive a perfect score in each evaluation area, an agency is under no obligation to discuss every aspect of the proposal which received less than the maximum score, if it is considered to be acceptable and in the competitive range. Associated Chem. and Env'tl. Servs., 67 Comp. Gen. at 324, 88-1 CPD ¶ 248 at 13.

Finally, to the extent TMR contends that the evaluation it received is not supported by the record, a protester's mere disagreement with the agency's judgment does not establish that an evaluation was unreasonable. Systems & Processes Eng'g Corp., B-232100, Nov. 15, 1988, 88-2 CPD ¶ 478. Based upon our review of the record, we find the evaluation of TMR, as well as the agency's decision to award to MINACT as the higher technically rated, lower cost offeror, reasonable and consistent with the stated evaluation criteria.

Accordingly, the protest is denied.



James F. Hinchman
General Counsel